FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 242/2005
(Uday Laxman Yadav VERSUS Pandurang Namdeorao Kalhane)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.Suresh Dhole , Adv. for the appellant.
Mrs. A.A. Joshi, Adv. for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 10th August, 2007.

Heard.

The appellant is the original defendant. A suit was filed by the plaintiff against the defendant for removal of encroachment of 33 sq. ft. of land and for a permanent injunction restraining the defendant from storing the cow dung in the space marked by letters EHIA in the plaint map.

The defendant denied the claim of the plaintiff and pleaded that the land was in his occupation since 1970. It was further pleaded by the defendant that in fact, the plaintiff had made an encroachment on his property. According to him, he was storing heaps of cow dung on his plot since 25 years and there was no question of causing any damage or nuisance to the plaintiff by the storage of the same.

The trial Court dismissed the suit of the

plaintiff by holding that the plaintiff had failed to prove that he was the owner of the suit site. The Court held that the plaintiff further failed to prove that the defendant had encroached upon his land. The permanent injunction restraining the defendant from storing the dung on the suit site was also not granted by the trial Court.

In an appeal filed by the plaintiff against the judgment passed by the trial Court, the first appellate Court, by the judgment dated 25th February, 2005, partly allowed the appeal and held that the defendant had encroached upon 33 sq.ft. of land belonging to the plaintiff. The appellate Court, however, did not maintain the judgment of the trial Court so far as it dismissed the claim of the plaintiff in regard to the storage of the cow dung.

The findings recorded by the first appellate Court are based on a proper appreciation of the material evidence on the record. The appellate Court considered the fact that the plaintiff examined himself and also examined two other witnesses which included the Engineer who had drawn the map to prove the encroachment. The Court observed that the defendant failed to enter the witness box and also failed to examined D.I.L.R. to show the possession of the property. On the basis of the oral as well as documentary evidence produced on the record by the plaintiff, the first

appellate Court came to a conclusion that the defendant had encroached upon 33 feet of land belonging to the plaintiff. The findings recorded by the first appellate Court appear to be just and proper.

Since no substantial question of law arises for consideration in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP